

CONFERENCE COMMITTEE REPORT DIGEST FOR EHB 1514

Citations Affected: IC 5-4-1-18; IC 5-11; IC 6-9; IC 34-25-2; IC 36-1-12-4.9; IC 36-7-31.3; IC 36-10-8.

Synopsis: Local government. Conference committee report for EHB 1514. Increases the required surety bond for certain officials, and provides that the state board of accounts may require a higher surety bond for officials who have engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds. Requires a deputy examiner, field examiner, or private examiner to make a preliminary report to the state examiner if: (1) a substantial amount of public funds has been misappropriated or diverted or is unaccounted for; (2) there is a reasonable likelihood that the final examination report will include a finding that the entity that is the subject of the report failed to observe a uniform compliance guideline or failed to comply with a specific law; or (3) the malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for the public funds was committed by the officer or employee who is primarily responsible for ensuring compliance with laws regarding maintaining and accounting for the funds. Requires the state examiner to provide a copy of the report to the attorney general, and authorizes the attorney general to bring a civil action against the delinquent employee or the official bond to recover misappropriated funds. Authorizes the attorney general to attach the assets of the delinquent employee. Specifies that the state board of accounts may require the use of an electronic, automated, or computerized system of accounting or reporting. Provides that a political subdivision may award a contract for public work under the procurement law for the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property if the cost is estimated to be less than \$150,000. Changes the name of the Fort Wayne-Allen county convention and tourism authority to the Allen County-Fort Wayne capital improvement board of managers (Allen County-Fort Wayne CIB). Removes the limitation on county appointments to the Allen County-Fort Wayne CIB having to live in the unincorporated area of the county. Provides that any food and beverage tax revenue in Allen County that is received after December 31, 2009, and is not needed for debt payments on the coliseum is to be transferred to the Allen County-Fort Wayne CIB and provides that the excess revenue may not be used to provide funding for improvements initiated before January 1, 2009, as part of the Harrison Square project or for operational expenses. Adds the facilities at the Indiana University-Purdue University at Fort Wayne campus to the Allen County professional sports development area. Removes the \$5 per person state revenue cap for the Allen County

professional sports development areas. Provides that the maximum amount of covered local and state taxes that may be captured in Allen County is \$3,000,000. Provides that Allen County receives the first \$2,600,000 of captured tax revenue each year for deposit in the supplemental coliseum expansion fund and the Allen County-Fort Wayne capital improvement board receives the remainder. Changes the allocation of excess Allen County food and beverage tax revenue so that the Allen County-Fort Wayne capital improvement board receives all the excess revenue. Provides that, after June 30, 2009, the Allen County-Fort Wayne CIB must approve any food and beverage tax pledge for bonds, loans, or leases. Requires the executive director of the Allen County Memorial Coliseum to file an annual report of operations with the Allen County-Fort Wayne CIB. Requires the executive manager of the Allen County-Fort Wayne CIB to file an annual report of operations with the Allen County-Fort Wayne CIB. Provides that the part of the Vanderburgh County innkeeper's tax rate that is dedicated to pay the operating expenses of a convention center is reduced from 2% to 1% after December 31, 2014 (rather than after December 31, 2009, under current law). Provides for a corresponding delay in the increase in the part of the Vanderburgh County innkeeper's tax rate that is deposited in the tourism capital improvement fund. Specifies that if the Vanderburgh County council adopts a resolution providing that the Vanderburgh County food and beverage tax should be continued to finance the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities, any excess food and beverage tax revenue that is not needed to pay any bonds, leases, or other obligations for a convention center shall be transferred to the fiscal officer of Evansville for deposit in an Evansville arena fund. Provides that money in the Evansville arena fund shall be used for financing the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities. Specifies that if the Vanderburgh County council adopts a resolution providing that the Vanderburgh County food and beverage tax should be continued to finance the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities, the food and beverage tax: (1) does not terminate after the last of the bonds issued to finance improvements to the Vanderburgh County auditorium or auditorium renovations, and the last of any bonds issued to refund those bonds, have been completely paid; and (2) continues until the last of the bonds issued to finance the acquisition, construction, and equipping of the Evansville arena and other facilities that serve or support the arena activities, and the last of any bonds issued to refund those bonds, have been completely paid. Repeals superseded provisions of the Allen County food and beverage tax. Repeals provisions specifying that the amounts received from the Vanderburgh County food and beverage tax shall be used to pay bonds issued to finance the construction of an airport terminal. Permits Monroe County to impose a county food and beverage tax of 1% of the gross retail income received by a food and beverage merchant. Establishes a local advisory commission to assist and coordinate efforts of the county and city fiscal bodies regarding the utilization of food and beverage tax revenue. Eliminates the expiration date in the Martinsville food and beverage tax by which the city of Martinsville may initiate projects funded by food and beverage tax revenues. Permits Martinsville to fund sewer improvements with the Martinsville food and beverage tax. Makes conforming amendments. **(This conference committee report: Increases the required surety bond for certain officials. Specifies that the state board of accounts may require the use of an electronic, automated, or computerized system of accounting or reporting. Removes provisions requiring certain disclosures from persons who receive payments pursuant to a development agreement. Provides that a political subdivision may award a contract for public work under the procurement law for the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property if the cost is estimated to be less than \$150,000. Changes the name of the Fort Wayne-Allen county convention and tourism authority to the Allen County-Fort Wayne capital improvement board of managers (Allen County-Fort Wayne CIB). Removes the limitation on county appointments to the Allen County-Fort Wayne CIB having to live in the unincorporated area of the county. Provides that any food and beverage tax revenue in Allen County that is received after December 31, 2009, and is not needed for debt payments on the coliseum is to be transferred to the Allen County-Fort Wayne CIB and provides that the excess revenue may not be used to provide funding for improvements initiated before January 1, 2009, as part of the Harrison Square project or for operational expenses. Adds**

the facilities at the Indiana University-Purdue University at Fort Wayne campus to the Allen County professional sports development area. Removes the \$5 per person state revenue cap for the Allen County professional sports development areas. Provides that the maximum amount of covered local and state taxes that may be captured in Allen County is \$3,000,000. Provides that Allen County receives the first \$2,600,000 of captured tax revenue each year for deposit in the supplemental coliseum expansion fund and the Allen County-Fort Wayne capital improvement board receives the remainder. Changes the allocation of excess Allen County food and beverage tax revenue so that the Allen County-Fort Wayne capital improvement board receives all the excess revenue. Provides that, after June 30, 2009, the Allen County-Fort Wayne CIB must approve any food and beverage tax pledge for bonds, loans, or leases. Requires the executive director of the Allen County Memorial Coliseum to file an annual report of operations with the Allen County-Fort Wayne CIB. Requires the executive manager of the Allen County-Fort Wayne CIB to file an annual report of operations with the Allen County-Fort Wayne CIB. Provides that the part of the Vanderburgh County innkeeper's tax rate that is dedicated to pay the operating expenses of a convention center is reduced from 2% to 1% after December 31, 2014 (rather than after December 31, 2009, under current law). Provides for a corresponding delay in the increase in the part of the Vanderburgh County innkeeper's tax rate that is deposited in the tourism capital improvement fund. Specifies that if the Vanderburgh County council adopts a resolution providing that the Vanderburgh County food and beverage tax should be continued to finance the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities, any excess food and beverage tax revenue that is not needed to pay any bonds, leases, or other obligations for a convention center shall be transferred to the fiscal officer of Evansville for deposit in an Evansville arena fund. Provides that money in the Evansville arena fund shall be used for financing the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities. Specifies that if the Vanderburgh County council adopts a resolution providing that the Vanderburgh County food and beverage tax should be continued to finance the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities, the food and beverage tax: (1) does not terminate after the last of the bonds issued to finance improvements to the Vanderburgh County auditorium or auditorium renovations, and the last of any bonds issued to refund those bonds, have been completely paid; and (2) continues until the last of the bonds issued to finance the acquisition, construction, and equipping of the Evansville arena and other facilities that serve or support the arena activities, and the last of any bonds issued to refund those bonds, have been completely paid. Repeals superseded provisions of the Allen County food and beverage tax. Repeals provisions specifying that the amounts received from the Vanderburgh County food and beverage tax shall be used to pay bonds issued to finance the construction of an airport terminal. Permits Monroe County to impose a county food and beverage tax of 1% of the gross retail income received by a food and beverage merchant. Establishes a local advisory commission to assist and coordinate efforts of the county and city fiscal bodies regarding the utilization of food and beverage tax revenue. Eliminates the expiration date in the Martinsville food and beverage tax by which the city of Martinsville may initiate projects funded by food and beverage tax revenues. Permits Martinsville to fund sewer improvements with the Martinsville food and beverage tax.)

Effective: Upon passage; July 1, 2009; January 1, 2010.

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1514 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 5-4-1-18, AS AMENDED BY P.L.146-2008,
- 3 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2009]: Sec. 18. (a) Except as provided in subsection (b), the
- 5 following city, town, county, or township officers and employees shall
- 6 file an individual surety bond:
- 7 (1) City judges, controllers, clerks, and clerk-treasurers.
- 8 (2) Town judges and clerk-treasurers.
- 9 (3) Auditors, treasurers, recorders, surveyors, sheriffs, coroners,
- 10 assessors, and clerks.
- 11 (4) Township trustees.
- 12 (5) Those employees directed to file an individual bond by the
- 13 fiscal body of a city, town, or county.
- 14 (6) Township assessors (if any).
- 15 (b) The fiscal body of a city, town, county, or township may by
- 16 ordinance authorize the purchase of a blanket bond or a crime
- 17 insurance policy endorsed to include faithful performance to cover the
- 18 faithful performance of all employees, commission members, and
- 19 persons acting on behalf of the local government unit, including those
- 20 officers described in subsection (a).
- 21 (c) **Except as provided in subsections (h) and (i)**, the fiscal bodies
- 22 of the respective units shall fix the amount of the bond of city
- 23 controllers, city clerk-treasurers, town clerk-treasurers, Barrett Law
- 24 fund custodians, county treasurers, county sheriffs, circuit court clerks,

township trustees, and conservancy district financial clerks as follows:

(1) The amount of **annual coverage** must equal ~~fifteen~~ **thirty** thousand dollars ~~(\$15,000)~~ **(\$30,000)** for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond, subject to subdivision (2).

(2) The amount of **annual coverage** may not be less than ~~fifteen~~ **thirty** thousand dollars ~~(\$15,000)~~ **(\$30,000)** nor more than three hundred thousand dollars (\$300,000) **unless the fiscal body approves a greater amount of annual coverage for the officer or employee.**

County auditors shall file bonds ~~in amounts that provide annual coverage~~ of not less than ~~fifteen~~ **thirty** thousand dollars ~~(\$15,000)~~ **(\$30,000)**, as fixed by the fiscal body of the county. The amount of **annual coverage** of the bond of any other person required to file an individual bond shall be fixed by the fiscal body of the unit at not less than ~~eight fifteen~~ thousand ~~five hundred~~ dollars ~~(\$8,500)~~ **(\$15,000)**.

(d) **Except as provided in subsection (j),** a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) shall file an individual surety bond in an amount:

(1) fixed by the board of directors of the solid waste management district; and

(2) that is at least ~~fifteen~~ **thirty** thousand dollars ~~(\$15,000)~~ **(\$30,000) in annual coverage.**

(e) Except as provided under subsection (d), a person who is required to file an individual surety bond by the board of directors of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) shall file a bond in an amount fixed by the board of directors.

(f) In 1982 and every four (4) years after that, the state examiner shall review the bond amounts fixed under this section and report in an electronic format under IC 5-14-6 to the general assembly whether changes are necessary to ensure adequate and economical coverage.

(g) The commissioner of insurance shall prescribe the form of the bonds or crime policies required by this section, in consultation with the commission on public records under IC 5-15-5.1-6.

(h) Notwithstanding subsection (c), the state board of accounts may fix the amount of the bond for a city controller, city clerk-treasurer, town clerk-treasurer, Barrett Law fund custodian, county treasurer, county sheriff, circuit court clerk, township trustee, or conservancy district financial clerk at an amount that exceeds thirty thousand dollars (\$30,000) for each one million dollars (\$1,000,000) of receipts of the officer's office during the last complete fiscal year before the purchase of the bond. However, the bond amount may not exceed three hundred thousand dollars (\$300,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the officer engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

(i) Notwithstanding subsection (c), the state board of accounts may fix the amount of the bond for any person who is not described in subsection (h) and is required to file an individual bond at an amount that exceeds fifteen thousand dollars (\$15,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the person engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

(j) Notwithstanding subsection (d), the state board of accounts may fix the amount of the bond for a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal) at an amount that exceeds thirty thousand dollars (\$30,000). An increased bond amount may be established under this subsection only if the state examiner issues a report under IC 5-11-5-1 that includes a finding that the controller engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

SECTION 2. IC 5-11-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. ~~(a)~~ The state board of accounts shall formulate, prescribe, and install a system of accounting and reporting in conformity with this chapter, which must comply with the following:

(1) Be uniform for every public office and every public account of the same class and contain written standards that an entity that is subject to audit must observe.

(2) Exhibit true accounts and detailed statements of funds collected, received, obligated, and expended for or on account of the public for any and every purpose whatever, and by all public officers, employees, or other individuals.

(3) Show the receipt, use, and disposition of all public property and the income, if any, derived from the property.

(4) Show all sources of public income and the amounts due and received from each source.

(5) Show all receipts, vouchers, contracts, obligations, and other documents kept, or that may be required to be kept, to prove the validity of every transaction.

The state board of accounts shall formulate or approve all statements and reports necessary for the internal administration of the office to which the statements and reports pertain. The state board of accounts shall approve all reports that are published or that are required to be filed in the office of state examiner. The state board of accounts shall from time to time make and enforce changes in the system and forms of accounting and reporting as necessary to conform to law.

~~(b) Notwithstanding subsection (a), the state board of accounts may not require a municipality to use an electronic, automated, or computerized system of accounting and reporting. However, if a municipality elects to use an electronic, automated, or computerized system of accounting, the system must conform to the requirements of this chapter.~~

SECTION 3. IC 5-11-1-4, AS AMENDED BY P.L.189-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. ~~(a)~~ The state examiner shall require from every municipality and every state or local governmental unit, entity, or instrumentality financial reports covering the full period of each fiscal year. ~~Except as provided by subsection (b),~~ These reports shall be prepared, verified, and filed with the state examiner not later than ~~thirty~~ **sixty (60)** days after the close of each fiscal year. **The reports must be filed electronically, in a manner prescribed by the state examiner that is compatible with the technology employed by the political subdivision.**

~~(b) The following shall prepare, verify, and file the reports required under subsection (a) not later than sixty (60) days after the close of each fiscal year:~~

~~(1) A municipal government.~~

~~(2) A public library.~~

~~(3) A district (as defined in IC 13-11-2-58(a)) that owns a landfill (as defined in IC 13-11-2-116(c)).~~

SECTION 4. IC 5-11-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Whenever an examination is made under this article, a report of the examination shall be made. The report must include a list of findings and shall be signed and verified by the examiner making the examination. A finding that is critical of an examined entity must be based upon one (1) of the following:

(1) Failure of the entity to observe a uniform compliance guideline established under IC 5-11-1-24(a).

(2) Failure of the entity to comply with a specific law.

A report that includes a finding that is critical of an examined entity must designate the uniform compliance guideline or the specific law upon which the finding is based. The reports shall immediately be filed with the state examiner, and, after inspection of the report, the state examiner shall immediately file one (1) copy with the officer or person examined, one (1) copy with the auditing department of the municipality examined and reported upon, and one (1) copy in an electronic format under IC 5-14-6 of the reports of examination of state agencies, instrumentalities of the state, and federal funds administered by the state with the legislative services agency, as staff to the general assembly. Upon filing, the report becomes a part of the public records of the office of the state examiner, of the office or the person examined, of the auditing department of the municipality examined and reported upon, and of the legislative services agency, as staff to the general assembly. A report is open to public inspection at all reasonable times after it is filed. If an examination discloses malfeasance, misfeasance, or nonfeasance in office or of any officer or employee, a copy of the report, signed and verified, shall be placed by the state examiner with the attorney general. The attorney general shall diligently institute and prosecute civil proceedings against the delinquent officer, or upon the officer's official bond, or both, and against any other proper person that will secure to the state or to the proper municipality the recovery of any funds misappropriated, diverted, or unaccounted for.

(b) Before an examination report is signed, verified, and filed as

required by subsection (a), the officer or the chief executive officer of the state office, municipality, or entity examined must have an opportunity to review the report and to file with the state examiner a written response to that report. If a written response is filed, it becomes a part of the examination report that is signed, verified, and filed as required by subsection (a).

(c) Except as required by ~~subsection~~ **subsections (b) and (d)**, it is unlawful for any deputy examiner, field examiner, or private examiner, before an examination report is made public as provided by this section, to make any disclosure of the result of any examination of any public account, except to the state examiner or if directed to give publicity to the examination report by the state examiner or by any court. If an examination report shows or discloses the commission of a crime by any person, it is the duty of the state examiner to transmit and present the examination report to the grand jury of the county in which the crime was committed at its first session after the making of the examination report and at any subsequent sessions that may be required. The state examiner shall furnish to the grand jury all evidence at the state examiner's command necessary in the investigation and prosecution of the crime.

(d) If, during an examination under this article, a deputy examiner, field examiner, or private examiner acting as an agent of the state examiner determines that the following conditions are satisfied, the examiner shall report the determination to the state examiner:

(1) A substantial amount of public funds has been misappropriated or diverted.

(2) The deputy examiner, field examiner, or private examiner acting as an agent of the state examiner has a reasonable belief that the malfeasance or misfeasance that resulted in the misappropriation or diversion of the public funds was committed by the officer or an employee of the office.

(e) After receiving a preliminary report under subsection (d), the state examiner may provide a copy of the report to the attorney general. The attorney general may institute and prosecute civil proceedings against the delinquent officer or employee, or upon the officer's or employee's official bond, or both, and against any other proper person that will secure to the state or to the proper municipality the recovery of any funds misappropriated, diverted, or unaccounted for.

(f) In an action under subsection (e), the attorney general may attach the defendant's property under IC 34-25-2.

(g) A preliminary report under subsection (d) is confidential until the final report under subsection (a) is issued, unless the attorney general institutes an action under subsection (e) on the basis of the preliminary report.

SECTION 5. IC 5-11-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) The state examiner, personally or through the deputy examiners, field examiners, or private examiners, upon the petition of twenty-five (25) interested taxpayers showing that effective local relief has not and cannot be obtained after

1 due effort, shall make the inquiries, tests, examinations, and
 2 investigations that may be necessary to determine whether:

3 (1) any public contract has been regularly and lawfully executed
 4 and performed; or

5 (2) any public work, building, or structure has been or is being
 6 performed, built, or constructed in accordance with the terms and
 7 provisions of the contract, and in compliance with the plans and
 8 specifications, if any.

9 Upon a written petition of twenty-five (25) taxpayers the state examiner
 10 may also require all plans, specifications, and estimates to be submitted
 11 to the state examiner for corrections and approval before a contract is
 12 awarded.

13 (b) The state examiner, deputy examiner, and any field examiner,
 14 when engaged in making an inquiry, test, examination, or investigation
 15 under subsection (a), is entitled to examine and inspect any public
 16 records, documents, data, contracts, plans, and specifications contained
 17 or found in any public office or other place pertaining or relating to the
 18 public contract or public work, building, or structure. In addition,
 19 subpoenas may be issued to witnesses to appear before the examiner in
 20 person or to produce books and papers for inspection and examination.
 21 The state examiner, deputy, field, and private examiner may administer
 22 oaths and examine witnesses under oath either orally or by
 23 interrogatories on all matters under examination and investigation.
 24 Under order of the state examiner, the examination may be transcribed,
 25 with the reasonable expense paid by the municipality in the same
 26 manner as the compensation of the field examiner is paid.

27 (c) The state examiner, the deputy examiner, and a field examiner
 28 may enforce attendance and answers to questions and interrogatories,
 29 as provided by law, with respect to examinations and investigations
 30 made by the state examiner, deputy examiner, field examiner, or
 31 private examiner of public offices.

32 (d) The state examiner, deputy examiner, any field examiner, and
 33 any private examiner, when making an examination or investigation
 34 under subsection (a), shall examine, inspect, and test the public works,
 35 buildings, or structures in the manner that the examiner sees fit to
 36 determine whether it is being performed, built, or constructed
 37 according to the contract and plans and specifications.

38 (e) The state examiner shall file a report covering any examination
 39 or investigation that discloses:

40 (1) fraud, collusion, misconduct, or negligence in the letting or
 41 the execution of any public contract or in the performance of any
 42 of the terms and conditions of any public contract; or

43 (2) any failure to comply with the terms or conditions of any
 44 public contract in the construction of any public work, building,
 45 or structure or to perform, build, or construct it according to the
 46 plans and specifications, if any, provided in the contract;

47 that causes loss, injury, waste, or damage to the state, the municipality,
 48 taxing or assessment district, other public entity, or to its citizens, if it
 49 is enforceable by assessment or taxation.

50 (f) The report must ~~be~~ **meet the following requirements:**

51 (1) **The report must be** made, signed, and verified in

quadruplicate by the examiner making the examination. ~~and~~

(2) **The report shall be** filed promptly with the state examiner.

After inspection of the report, the state examiner shall file a copy of the report **promptly** with the attorney general.

(g) The attorney general shall diligently institute and prosecute civil proceedings against any or all officers, individuals, and persons in the form and manner that the attorney general determines will secure a proper recovery to the state, municipality, taxing or assessment district, or other public entity injured, defrauded, or damaged by the matters in the report. These prosecutions may be made by the attorney general and the recovery may be had, either upon public official bonds, contractors' bonds, surety or other bonds, or upon individual liability, either upon contract or in tort, as the attorney general determines is wise. No action or recovery in any form or manner, or against any party or parties, precludes further or additional action or recovery in any other form or manner or against another party, either concurrently with or later found necessary, to secure complete recovery and restitution with respect to all matters exhibited, set out, or described in the report. The suits may be brought in the name of the state on the relation of the attorney general for the benefit of the state, or the municipality, taxing or assessment district, or other public entity that may be proper. The actions brought against any defendants may be joined, as to parties, form, and causes of action, in the manner that the attorney general decides.

(h) Any report described in this section or a copy duly certified by the state examiner shall be taken and received in any and all courts of this state as prima facie evidence of the facts stated and contained in the reports.

(i) If an examination, investigation, or test is made without a petition being first filed and the examination, investigation, or test shows that the terms of the contract are being complied with, then the expense of the examination, investigation, or test shall be paid by the state upon vouchers approved by the state examiner from funds available for contractual service of the state board of accounts. If such a report shows misfeasance, malfeasance, or nonfeasance in public office or shows that the terms of the plans and specifications under which a contract has been awarded are not being complied with, it is unlawful to make the report public until the report has been certified to the attorney general.

(j) If, during an examination under this article, a deputy examiner, field examiner, or private examiner acting as an agent of the state examiner determines that all of the following conditions are satisfied, the examiner shall report the determination to the state examiner:

(1) A substantial amount of public funds has been misappropriated or diverted.

(2) The deputy examiner, field examiner, or private examiner acting as an agent of the state examiner has a reasonable belief that the malfeasance or misfeasance that resulted in the misappropriation or diversion of public funds was committed by the officer or an employee of the office.

(k) After receiving a preliminary report under subsection (j), the state examiner may provide a copy of the report to the attorney general. The attorney general may institute and prosecute civil proceedings against the delinquent officer or employee, or upon the officer's or employee's official bond, or both, and against any other proper person that will secure to the state or to the proper municipality the recovery of any funds misappropriated, diverted, or unaccounted for.

(l) In an action under subsection (k), the attorney general may attach the defendant's property under IC 34-25-2.

(m) A preliminary report under subsection (j) is confidential until the final report under subsection (e) is issued, unless the attorney general institutes an action under subsection (k) on the basis of the preliminary report.

SECTION 6. IC 6-9-2.5-7.5, AS AMENDED BY P.L.224-2007, SECTION 94, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7.5. (a) The county treasurer shall establish a tourism capital improvement fund.

(b) The county treasurer shall deposit money in the tourism capital improvement fund as follows:

(1) Before January 1, ~~2010~~, **2015**, the county treasurer shall deposit in the tourism capital improvement fund the amount of money received under section 6 of this chapter that is generated by a three and one-half percent (3.5%) rate.

(2) After December 31, ~~2009~~, **2014**, the county treasurer shall deposit in the tourism capital improvement fund the amount of money received under section 6 of this chapter that is generated by a four and one-half percent (4.5%) rate.

(c) The commission may transfer money in the tourism capital improvement fund to:

(1) the county government, a city government, or a separate body corporate and politic in a county described in section 1 of this chapter; or

(2) any Indiana nonprofit corporation;

for the purpose of making capital improvements in the county that promote conventions, tourism, or recreation. The commission may transfer money under this section only after approving the transfer. Transfers shall be made quarterly or less frequently under this section.

SECTION 7. IC 6-9-2.5-7.7, AS AMENDED BY P.L.168-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7.7. (a) The county treasurer shall establish a convention center operating fund.

(b) Before January 1, ~~2010~~, **2015**, the county treasurer shall deposit in the convention center operating fund the amount of money received under section 6 of this chapter that is generated by a two percent (2%) rate. Money in the fund must be expended for the operating expenses of a convention center.

(c) After December 31, ~~2009~~, **2014**, the county treasurer shall deposit in the convention center operating fund the amount of money received under section 6 of this chapter that is generated by a one percent (1%) rate. Money in the fund must be expended for the

operating expenses of a convention center with the unused balance transferred on January 1 of each year to the tourism capital improvement fund.

SECTION 8. IC 6-9-20-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The fiscal body of the county may adopt an ordinance to impose an excise tax, known as the county food and beverage tax, on those transactions described in section 4 of this chapter.

(b) If a fiscal body adopts an ordinance under subsection (a), it shall immediately send a certified copy of the ordinance to the commissioner of the department of state revenue.

(c) If a fiscal body adopts an ordinance under subsection (a), the county food and beverage tax applies to transactions that occur after the last day of the month that succeeds the month in which the ordinance was adopted.

~~(d) The tax terminates in a county on January 1 of the year immediately following the year in which the last of the bonds issued to finance the construction of an airport terminal and the last of any bonds issued to refund those bonds have been completely paid as to both principal and interest.~~

~~(e) Notwithstanding subsection (d);~~ **(d) Except as provided in subsection (e), if the county fiscal body determines that the tax under this chapter should be continued in order to finance improvements to a county auditorium or auditorium renovation resulting in a new convention center and related parking facilities, the tax does not terminate as specified in subsection (d) but instead continues until January 1 of the year following the year in which the last of the bonds issued to finance improvements to a county auditorium or auditorium renovation resulting in a new convention center and related parking facilities, and the last of any bonds issued to refund those bonds, have been completely paid or defeased as to both principal and interest. An action to contest the validity of the determination under this subsection must be instituted not more than thirty (30) days after the determination.**

(e) Notwithstanding subsection (d), if the county fiscal body determines that the tax under this chapter should be continued to finance the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities, the tax does not terminate as specified in subsection (d) but continues until January 1 of the year following the year in which the last of the bonds issued to finance the acquisition, construction, and equipping of the arena and other facilities that serve or support the arena activities, and the last of any bonds issued to refund those bonds, have been completely paid or defeased as to both principal and interest. An action to contest the validity of the determination under this subsection must be instituted not more than thirty (30) days after the determination.

SECTION 9. IC 6-9-20-7.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7.5. If

~~(1) the treasurer of the airport authority has certified to the treasurer of state that the last of the bonds issued to finance the~~

1 construction of an airport terminal and the last of any bonds
 2 issued to refund those bonds have been completely paid as to both
 3 principal and interest; and

4 ~~(2)~~ the county fiscal body has determined to continue the tax to
 5 finance improvements to a county auditorium or auditorium
 6 renovation resulting in a new convention center and related
 7 parking facilities **or to finance the acquisition, construction,**
 8 **and equipping of an arena and other facilities that serve or**
 9 **support the arena activities,** the amounts received from the
 10 taxes imposed under this chapter shall be paid monthly by the
 11 treasurer of state to the county treasurer **under section 8.5 of this**
 12 **chapter or the fiscal officer of the largest municipality in the**
 13 **county under section 9.5 of this chapter** upon warrants issued
 14 by the auditor of state.

15 SECTION 10. IC 6-9-20-8.5 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8.5. (a) If the tax
 17 imposed under section 3 of this chapter is continued to finance
 18 improvements to the county auditorium or auditorium renovation
 19 resulting in a new convention center and related parking facilities, the
 20 county treasurer shall establish an auditorium fund.

21 (b) **Except as provided in sections 8.8 and 9.5 of this chapter,** the
 22 county treasurer shall deposit in this fund all amounts received under
 23 this chapter.

24 (c) Any money earned from the investment of money in the fund
 25 becomes a part of the fund.

26 (d) Money in the fund shall be used by the county for the financing,
 27 construction, renovation, improvement, and equipping of a county
 28 auditorium or auditorium renovation resulting in a new convention
 29 center and related parking facilities.

30 SECTION 11. IC 6-9-20-8.8 IS ADDED TO THE INDIANA CODE
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 32 1, 2009]: Sec. 8.8. (a) **If the tax imposed under section 3 of this**
 33 **chapter is continued to finance the acquisition, construction, and**
 34 **equipping of an arena and other facilities that serve or support the**
 35 **arena activities, the county treasurer shall determine whether**
 36 **there is any food and beverage tax revenue under this chapter that**
 37 **is not required to be deposited and held to:**

38 (1) **pay any debt service on bonds issued or rentals on leases**
 39 **entered into by January 1, 2009, for which a pledge of**
 40 **revenues of the food and beverage tax has been made by the**
 41 **county as set forth in section 8.7 of this chapter; or**

42 (2) **provide for a debt service reserve related to the bonds or**
 43 **leases described in subdivision (1).**

44 (b) **Before the twentieth day of each month, the county treasurer**
 45 **shall determine whether there is excess food and beverage tax**
 46 **revenue under subsection (a) and by the last day of that month**
 47 **transfer the excess food and beverage tax revenue to the fiscal**
 48 **officer of the most populated municipality in the county. The**
 49 **municipal fiscal officer shall deposit the excess food and beverage**
 50 **tax revenue in a municipal arena fund. Any money earned from the**
 51 **investment of money in the municipal arena fund becomes a part**

of the municipal arena fund. Money in the municipal arena fund shall be used by the most populated municipality in the county for financing the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities. This money shall be retained in the municipal arena fund until applied or transferred to another fund pledged to the payment of debt service on bonds, rent on leases, or other obligations incurred to finance the facilities.

SECTION 12. IC 6-9-20-8.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8.9. (a) If the tax imposed under section 3 of this chapter is continued to finance the acquisition, construction, and equipping of an arena and other facilities that serve or support the arena activities, the most populated municipality in the county may issue bonds, enter into leases, or incur other obligations to:**

- (1) pay any costs associated with the financing, acquisition, construction, and equipping of the arena and other facilities that serve or support the arena activities; or**
- (2) refund bonds issued or other obligations incurred under this chapter so long as any bonds issued or other obligations incurred to refund bonds or retire other obligations do not extend the date when the previous bonds or other obligations will be completely paid as to principal and interest.**

(b) Bonds issued or other obligations incurred under this section:

- (1) are payable from money provided in this chapter, any other revenues available to the municipality, or any combination of these sources;**
- (2) must be issued in the manner prescribed by IC 36-4-6-19 through IC 36-4-6-20;**
- (3) may not have a term ending more than thirty (30) years after the first February 1 following the date on which construction of the arena and other facilities that serve or support the arena activities is estimated to be completed;**
- (4) may be payable at any regular designated intervals and may be paid in unequal amounts if the municipality reasonably expects to pay the debt service from funds other than property taxes that are exempt from the levy limitations of IC 6-1.1-18.5 (even if the municipality has pledged to levy property taxes to pay the debt service if those other funds are insufficient); and**
- (5) may, in the discretion of the municipality, be sold at a negotiated sale at a price to be determined by the municipality or in accordance with IC 5-1-11 and IC 5-3-1.**

(c) Leases entered into under this section:

- (1) may be for a term ending not later than thirty (30) years after the first February 1 following the date on which construction of the arena and other facilities that serve or support the arena activities is estimated to be completed;**
- (2) may be payable at any regular designated intervals and may be paid in unequal amounts if the municipality**

1 reasonably expects to pay the lease rentals from funds other
 2 than property taxes that are exempt from the levy limitations
 3 of IC 6-1.1-18.5 (even if the municipality has pledged to levy
 4 property taxes to pay the lease rentals if those other funds are
 5 insufficient);

6 (3) may provide for payments from revenues under this
 7 chapter, any other revenues available to the municipality, or
 8 any combination of these sources;

9 (4) may provide that payments by the municipality to the
 10 lessor are required only to the extent and only for the time
 11 that the lessor is able to provide the leased facilities in
 12 accordance with the lease;

13 (5) must be based upon the value of the facilities leased; and

14 (6) may not create a debt of the municipality for purposes of
 15 the Constitution of the State of Indiana.

16 (d) A lease may be entered into by the municipal executive after
 17 a public hearing of the municipal fiscal body at which all interested
 18 parties are provided the opportunity to be heard. After the public
 19 hearing, the municipal executive may approve the execution of the
 20 lease on behalf of the municipality only if:

21 (1) the municipal executive finds that the service to be
 22 provided throughout the life of the lease will serve the public
 23 purpose of the municipality and is in the best interests of its
 24 residents; and

25 (2) the lease is approved by an ordinance of the municipal
 26 fiscal body.

27 (e) An action to contest the validity of bonds issued or leases
 28 entered into under this section must be brought not later than
 29 thirty (30) days after the adoption of a bond ordinance or the
 30 municipal executive's action approving the execution of the lease.

31 (f) Notwithstanding the provisions of this chapter or any other
 32 law, instead of issuing bonds, entering into leases, or incurring
 33 obligations in whole or in part under this chapter, the most
 34 populated municipality in the county may cause bonds to be issued,
 35 leases to be entered into, or obligations to be incurred under this
 36 subsection to finance the acquisition, construction, and equipping
 37 of an arena and other facilities that serve or support the arena. The
 38 bonds, leases, or obligations:

39 (1) must be issued, entered into, or incurred by any special
 40 taxing district, agency, department, or instrumentality of or
 41 in the municipality, under any other law by which bonds may
 42 be issued, leases may be entered into, or obligations incurred;

43 (2) must be payable from money provided under this chapter,
 44 from any other revenues available to the municipality or any
 45 special taxing district, agency, department, or instrumentality
 46 of or in the municipality, or any combination of these sources;

47 (3) must have a term ending not later than thirty (30) years
 48 after the first February 1 following the date on which
 49 construction of the arena and other facilities that serve or
 50 support the arena activities is estimated to be completed; and

(4) may be payable at any regular designated intervals and may be paid in unequal amounts if the municipality, special taxing district, agency, department, or instrumentality of or in the municipality reasonably expects to pay the debt service or lease rentals from funds other than property taxes that are exempt from the levy limitations of IC 6-1.1-18.5 (even if the municipality or any special taxing district, agency, department, or instrumentality of or in the municipality has pledged to levy property taxes to pay the debt service or lease rentals if those other funds are insufficient).

SECTION 13. IC 6-9-20-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. With respect to

(1) bonds for which a pledge of airport authority revenues has been made by the airport authority, the Indiana general assembly covenants with the airport authority and the purchasers of those bonds that:

(A) this chapter will not be repealed or amended in any manner that will adversely affect the imposition or collection of the tax imposed by this chapter; and

(B) this chapter will not be amended in any manner that will change the purpose for which revenues from the tax imposed by this chapter may be used;

as long as the principal of or interest on any of those bonds is unpaid; and

(2) bonds, leases, or other obligations for which a pledge of revenues of the food and beverage tax imposed under this chapter has been made by the county as set forth in section 8.7 or 8.9 of this chapter, and bonds issued by a lessor that are payable from lease rentals, the general assembly covenants with the county, **the most populated municipality in the county**, and the purchasers or owners of the bonds or other obligations described in this subdivision that this chapter will not be repealed or amended in any manner that will adversely affect the imposition or collection of the food and beverage tax imposed by this chapter as long as the principal of any bonds, the interest on any bonds, or the lease rentals due under any lease are unpaid.

SECTION 14. IC 6-9-20-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9.5. If:

(1) the county treasurer has certified to the treasurer of state that:

(A) the last of the bonds issued to finance the improvements to a county auditorium or auditorium renovation resulting in a new convention center and related parking facilities; and

(B) the last of any bonds issued to refund the bonds referred to in clause (A);

have been completely paid or defeased as to both principal and interest; and

(2) the county fiscal body has made a determination to continue the tax to finance the acquisition, construction, and

1 **equipping of an arena and other facilities that serve or**
 2 **support the arena activities;**
 3 **the amounts received from the taxes imposed under this chapter**
 4 **shall be paid monthly by the treasurer of state to the fiscal officer**
 5 **of the most populated municipality in the county upon warrants**
 6 **issued by the auditor of state. The fiscal officer shall deposit any**
 7 **amounts received under this section in the municipal arena fund.**

8 SECTION 15. IC 6-9-20-11 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. The financing of:

10 (1) improvements to a county auditorium or auditorium
 11 renovation resulting in a new convention center and related
 12 parking facilities; **and**

13 **(2) the acquisition, construction, and equipping of an arena**
 14 **and other facilities that serve or support the arena activities;**

15 serves a public purpose and is of benefit to the general welfare of the
 16 county by enhancing cultural activities and improving the quality of life
 17 in the county and encouraging investment, economic growth, and
 18 diversity.

19 SECTION 16. IC 6-9-27-9.5, AS AMENDED BY P.L.184-2006,
 20 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JANUARY 1, 2010]: Sec. 9.5. (a) A city shall use money in the fund
 22 established under section 8.5 of this chapter for only the following:

23 (1) Renovating the city hall.

24 (2) Constructing new police or fire stations, or both.

25 (3) Improving the city's sanitary sewers or wastewater treatment
 26 facilities, or both.

27 (4) Improving the city's storm water drainage systems.

28 (5) Other projects involving the city's water system **or sanitary**
 29 **sewer system** or protecting the city's well fields, as determined by
 30 the city fiscal body.

31 ~~Money in the fund may not be used for the operating costs of a project.~~
 32 ~~In addition, the city may not initiate a project under this chapter after~~
 33 ~~December 31, 2015.~~

34 (b) The fiscal body of the city may pledge money in the fund to pay
 35 bonds issued, loans obtained, and lease payments or other obligations
 36 incurred by or on behalf of the city or a special taxing district in the city
 37 to provide the projects described in subsection (a).

38 (c) Subsection (b) applies only to bonds, loans, lease payments, or
 39 obligations that are issued, obtained, or incurred after the date on which
 40 the tax is imposed under section 3 of this chapter.

41 (d) A pledge under subsection (b) is enforceable under IC 5-1-14-4.

42 SECTION 17. IC 6-9-33-5 IS AMENDED TO READ AS
 43 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. The county
 44 supplemental food and beverage tax imposed on a food or beverage
 45 transaction described in section 4 of this chapter may not exceed one
 46 percent (1%) of the gross retail income received by the merchant from
 47 the transaction. For purposes of this chapter, the gross retail income
 48 received by the retail merchant from such a transaction does not
 49 include the amount of tax imposed on the transaction under IC 6-2.5.
 50 ~~or IC 6-9-23.~~

SECTION 18. IC 6-9-33-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) If a tax is imposed under section 3 of this chapter, the county treasurer shall establish a supplemental coliseum improvement fund. The county treasurer shall deposit in this fund all amounts received from the tax imposed under this chapter. Money in this fund:

(1) may be appropriated only

~~(1) for acquisition, improvement, remodeling, or expansion of; or~~
~~(2) to retire or advance refund bonds issued, loans obtained, or~~
 lease payments incurred under IC 36-1-10 (referred to in this chapter as "obligations") to remodel, expand, improve, or acquire an athletic and exhibition coliseum in existence before the effective date of an ordinance adopted under section 3 of this chapter; **and**

(2) shall be used to make transfers required by subsection (b).

(b) There is established a food and beverage tax reserve account to be administered by the capital improvement board of managers (IC 36-10-8). The money that is deposited in the supplemental coliseum improvement fund after December 31, 2009, and is not needed in a year to make payments on obligations for which a pledge of revenue under this chapter was made before January 1, 2009, shall be transferred to the capital improvement board. The county treasurer shall make the transfer before February 1 of the following year. The capital improvement board shall deposit the money it receives in the board's food and beverage tax reserve account. Money in the reserve account may not be withdrawn or transferred during the year it is received except to make transfers back to the county to make payments on obligations for which a pledge of revenue under this chapter was made before January 1, 2009. However, the capital improvement board may transfer:

(1) interest earned on money in the reserve account; and

(2) an amount equal to the balance that has been held in the reserve account for at least twelve (12) months;

to the board's capital improvement fund established by IC 36-10-8-12.

(c) Excess revenue transferred under subsection (b) to the capital improvement board of managers may not be used to:

(1) provide funding for improvements initiated before January 1, 2009, that are located in the area bounded on the north by Jefferson Boulevard, on the east by Harrison Street, on the south by Breckenridge Street, and on the west by Ewing Street as those public ways were located on January 1 2009, as part of the Harrison Square project; or

(2) pay operational expenses for any facilities of the municipality.

SECTION 19. IC 6-9-33-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 9. ~~(a) The county may enter into an agreement under which amounts deposited in; or to be deposited in; the supplemental coliseum expansion fund are pledged to payment of obligations issued to finance the remodeling; expansion; or~~

1 maintenance of an athletic and exhibition coliseum under section 8 of
2 this chapter.

3 ~~(b)~~ (a) Obligations entered into before January 1, 2009, for the
4 acquisition, expansion, remodeling, and improvement of an athletic and
5 exhibition coliseum shall be retired by using money collected from a
6 tax imposed under this chapter.

7 ~~(c)~~ (b) With respect to obligations for which a pledge has been made
8 under subsection (a), this section before January 1, 2009, the general
9 assembly covenants with the holders of these obligations that:

10 (1) this chapter will not be repealed or amended in any manner
11 that will adversely affect the imposition or collection of the tax
12 imposed under this chapter; and

13 (2) this chapter will not be amended in any manner that will
14 change the purpose for which revenues from the tax imposed
15 under this chapter may be used;

16 as long as the payment of any of those obligations is outstanding.

17 SECTION 20. IC 6-9-33-11 IS ADDED TO THE INDIANA CODE
18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
19 1, 2009]: **Sec. 11. On or before March 31 each year, the executive
20 director of the World War Memorial Coliseum shall submit to the
21 capital improvement board of managers an annual report of the
22 operations of the coliseum.**

23 SECTION 21. IC 6-9-41 IS ADDED TO THE INDIANA CODE AS
24 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
25 PASSAGE]:

26 **Chapter 41. Monroe County Food and Beverage Tax**

27 **Sec. 1. This chapter applies to Monroe County.**

28 **Sec. 2. Except as provided in sections 3, 4, and 9(b) of this
29 chapter, the definitions in IC 6-9-12-1 and IC 36-1-2 apply
30 throughout this chapter.**

31 **Sec. 3. As used in this chapter, "city" means the city of
32 Bloomington.**

33 **Sec. 4. As used in this chapter, "county" means Monroe County.**

34 **Sec. 5. (a) The fiscal body of the county may adopt an ordinance
35 to impose an excise tax, known as the county food and beverage
36 tax, on those transactions described in section 6 of this chapter.
37 The effective date of an ordinance adopted under this subsection
38 must be after December 31, 2009.**

39 **(b) If the fiscal body adopts an ordinance under subsection (a),
40 the fiscal body shall immediately send a certified copy of the
41 ordinance to the commissioner of the department of state revenue.**

42 **(c) If the fiscal body adopts an ordinance under subsection (a),
43 the county food and beverage tax applies to transactions that occur
44 after the last day of the month that succeeds the month in which
45 the ordinance is adopted. However, if an ordinance is adopted
46 before December 1, 2009, and the ordinance takes effect January
47 1, 2010, the tax applies to transactions after December 31, 2009.**

48 **Sec. 6. (a) Except as provided in subsection (c), a tax imposed
49 under section 5 of this chapter applies to any transaction in which
50 food or beverage is furnished, prepared, or served:**

- (1) for consumption at a location, or on equipment, provided by a retail merchant;
- (2) in the county in which the tax is imposed; and
- (3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) food sold in a heated state or heated by a retail merchant;
- (3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or
- (4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) The county food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

Sec. 7. The county food and beverage tax imposed on a food or beverage transaction described in section 6 of this chapter equals one percent (1%) of the gross retail income received by the merchant from the transaction. For purposes of this chapter, the gross retail income received by the retail merchant from the transaction does not include the amount of tax imposed on the transaction under IC 6-2.5.

Sec. 8. If an ordinance is not adopted under section 9 of this chapter, the tax that may be imposed under section 5 of this chapter shall be imposed, paid, and collected in the same manner that the state gross retail tax is imposed, paid, and collected under IC 6-2.5. However, the return to be filed for the payment of the tax under this chapter may be made separately or may be combined with the return filed for the payment of the state gross retail tax, as prescribed by the department of state revenue.

Sec. 9. (a) The county fiscal body may adopt an ordinance to require that the tax imposed under section 5 of this chapter be reported on forms approved by the county treasurer and that the tax be paid monthly to the county treasurer. If an ordinance is adopted under this subsection, the tax shall be paid to the county treasurer not more than twenty (20) days after the end of the month in which the tax is collected. If an ordinance is not adopted under this subsection, the tax shall be imposed, paid, and collected in exactly the same manner as the state gross retail tax is imposed, paid, and collected under IC 6-2.5.

(b) If an ordinance is adopted under this section, all of the provisions of IC 6-2.5 relating to rights, duties, liabilities, procedures, penalties, definitions, exemptions, and administration apply to the imposition and administration of the tax imposed under section 5 of this chapter, except to the extent those provisions are in conflict or inconsistent with the specific provisions of this chapter or the requirements of the county treasurer.

(c) For purposes of this chapter, the terms "person" and "gross retail income" have the same meaning in this section as set forth in IC 6-2.5, except that "person" does not include state supported educational institutions. If the tax is paid to the department of state revenue, the returns to be filed for the payment of the tax under this section may be either a separate return or may be combined with the return filed for the payment of the state gross retail tax as the department of state revenue may by rule determine.

Sec. 10. If an ordinance is not adopted under section 9 of this chapter, the amounts received from the county food and beverage tax imposed under section 5 of this chapter shall be paid monthly by the treasurer of state to the county treasurer upon warrants issued by the auditor of state.

Sec. 11. (a) If an ordinance is adopted under section 5 of this chapter, the county treasurer shall establish a food and beverage tax receipts fund.

(b) The county treasurer shall deposit in the fund county food and beverage tax revenue that the county treasurer receives.

(c) Any money earned from the investment of money in the fund becomes part of the fund.

(d) Money in the fund at the end of the county fiscal year does not revert to the county general fund.

Sec. 12. (a) If an ordinance is adopted under section 5 of this chapter, the fiscal officer of the city shall establish a food and beverage tax receipts fund.

(b) The fiscal officer shall deposit in the fund county food and beverage tax revenue that the fiscal officer receives.

(c) Any money earned from the investment of money in the fund becomes part of the fund.

(d) Money in the fund at the end of the city fiscal year does not revert to the city general fund.

Sec. 13. (a) Each month, the county auditor shall distribute the county food and beverage tax revenue received by the county treasurer between the city and the county according to the location where the county food and beverage tax was collected. If the county food and beverage tax was collected in the city, the city must receive the revenue. If the county food and beverage tax was collected in the part of the county that is outside the city, the county must receive the revenue.

(b) Distribution of county food and beverage tax revenue to the city must be on warrants issued by the county auditor.

Sec. 14. The county's share of county food and beverage tax revenue deposited in the county food and beverage tax receipts

1 fund may be used only to finance, refinance, construct, operate, or
 2 maintain a convention center, a conference center, or related
 3 tourism or economic development projects.

4 **Sec. 15. Money deposited in the city food and beverage tax**
 5 **receipts fund may be used only to finance, refinance, construct,**
 6 **operate, or maintain a convention center, a conference center, or**
 7 **related tourism or economic development projects.**

8 **Sec. 16. (a) In order to coordinate and assist efforts of the**
 9 **county and city fiscal bodies regarding the utilization of food and**
 10 **beverage tax receipts, an advisory commission shall be established**
 11 **and composed of the following individuals:**

12 (1) Three (3) members who are owners of retail facilities that
 13 sell food or beverages subject to the county food and beverage
 14 tax imposed under this chapter appointed by the city and
 15 county executive.

16 (2) The president of the county executive.

17 (3) A member of the county fiscal body appointed by the
 18 members of the county fiscal body.

19 (4) The city executive.

20 (5) A member of the city legislative body appointed by the
 21 members of the city legislative body.

22 (b) The county and city legislative bodies must request the
 23 advisory commission's recommendations concerning the
 24 expenditure of any food and beverage tax funds collected under
 25 this chapter. The county or city legislative body may not adopt any
 26 ordinance or resolution requiring the expenditure of food and
 27 beverage tax collected under this chapter without the approval, in
 28 writing, of a majority of the members of the advisory commission.

29 SECTION 22. IC 34-25-2-1 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) At or after the
 31 time of filing a complaint, the plaintiff may have an attachment against
 32 the property of the defendant, in the cases described in subsection (b)
 33 and in the manner described in this chapter.

34 (b) The plaintiff may attach property when the action is for the
 35 recovery of money and the defendant:

36 (1) is, or one (1) of several defendants is, a foreign corporation or
 37 a nonresident of Indiana;

38 (2) is, or one (1) of several defendants is, secretly leaving or has
 39 left Indiana with intent to defraud:

40 (A) the defendant's creditors;

41 (B) the state;

42 (C) a municipal corporation;

43 (D) a political subdivision; or

44 (E) a school corporation (as defined in IC 20-18-2-16(c));

45 (3) is concealed so that a summons cannot be served upon the
 46 defendant;

47 (4) is removing or about to remove the defendant's property
 48 subject to execution, or a material part of the property, outside
 49 Indiana, not leaving enough behind to satisfy the plaintiff's claim;

(5) has sold, conveyed, or otherwise disposed of the defendant's property subject to execution, or permitted the property to be sold with the fraudulent intent to cheat, hinder, or delay:

(A) the defendant's creditors;

(B) the state;

(C) a municipal corporation;

(D) a political subdivision; or

(E) a school corporation (as defined in IC 20-18-2-16(c));

or

(6) is about to sell, convey, or otherwise dispose of the defendant's property subject to execution with the fraudulent intent to cheat, hinder, or delay:

(A) the defendant's creditors;

(B) the state;

(C) a municipal corporation;

(D) a political subdivision; or

(E) a school corporation (as defined in IC 20-18-2-16(c)).

(c) The plaintiff is entitled to an attachment for the causes mentioned in subsection (b)(2), (b)(4), (b)(5), and (b)(6) whether the cause of action is due or not.

SECTION 23. IC 34-25-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. **Except for actions filed by the attorney general under IC 5-11-5-1 or IC 5-11-6-1**, the plaintiff or a person representing the plaintiff shall execute a written undertaking, with sufficient surety, to be approved by the clerk, payable to the defendant, to the effect that the plaintiff will:

(1) duly prosecute the proceeding in attachment; and

(2) pay all damages that may be sustained by the defendant if the proceedings of the plaintiff are wrongful and oppressive.

SECTION 24. IC 36-1-12-4.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4.9. **(a) This section applies to a public work for the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property if the cost of the public work is estimated to be less than one hundred fifty thousand dollars (\$150,000).**

(b) The board may award a contract for public work described in subsection (a) in the manner provided in IC 5-22.

SECTION 25. IC 36-7-31.3-8, AS AMENDED BY P.L.1-2006, SECTION 570, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) A designating body may designate as part of a professional sports and convention development area any facility that is:

(1) owned by the city, the county, a school corporation, or a board under IC 36-9-13, IC 36-10-8, IC 36-10-10, or IC 36-10-11, and used by a professional sports franchise for practice or competitive sporting events; or

(2) owned by the city, the county, or a board under IC 36-9-13, IC 36-10-8, IC 36-10-10, or IC 36-10-11, and used as one (1) of the following:

- 1 (A) A facility used principally for convention or tourism
- 2 related events serving national or regional markets.
- 3 (B) An airport.
- 4 (C) A museum.
- 5 (D) A zoo.
- 6 (E) A facility used for public attractions of national
- 7 significance.
- 8 (F) A performing arts venue.
- 9 (G) A county courthouse registered on the National Register
- 10 of Historic Places.

11 A facility may not include a private golf course or related
 12 improvements. The tax area may include only facilities described in
 13 this section and any parcel of land on which a facility is located. An
 14 area may contain noncontiguous tracts of land within the city, county,
 15 or school corporation.

16 (b) Except for a tax area that is located in a city having a population
 17 of:

- 18 (1) more than one hundred fifty thousand (150,000) but less than
- 19 five hundred thousand (500,000); or
- 20 (2) more than ninety thousand (90,000) but less than one hundred
- 21 five thousand (105,000);

22 a tax area must include at least one (1) facility described in subsection
 23 (a)(1).

24 (c) A tax area may contain other facilities not owned by the
 25 designating body if:

- 26 (1) the facility is owned by a city, the county, a school
- 27 corporation, or a board established under IC 36-9-13, IC 36-10-8,
- 28 IC 36-10-10, or IC 36-10-11; and
- 29 (2) an agreement exists between the designating body and the
- 30 owner of the facility specifying the distribution and uses of the
- 31 covered taxes to be allocated under this chapter.

32 **(d) This subsection applies to all tax areas located in a county**
 33 **having a population of more than three hundred thousand**
 34 **(300,000) but less than four hundred thousand (400,000). The**
 35 **facilities located at an Indiana University-Purdue University**
 36 **regional campus are added to the tax area designated by the**
 37 **county. The maximum amount of covered taxes that may be**
 38 **captured in all tax areas located in the county is three million**
 39 **dollars (\$3,000,000) per year, regardless of the designating body**
 40 **that established the tax area. The county option income taxes**
 41 **imposed under IC 6-3.5 that are captured must be counted first**
 42 **toward this maximum.**

43 SECTION 26. IC 36-7-31.3-10 IS AMENDED TO READ AS
 44 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) A tax area must
 45 be established by resolution. A resolution establishing a tax area must
 46 provide for the allocation of covered taxes attributable to a taxable
 47 event or covered taxes earned in the tax area to the professional sports
 48 and convention development area fund established for the city or
 49 county. The allocation provision must apply to the entire tax area.
 50 **However, for all tax areas located in a county having a population**
 51 **of more than three hundred thousand (300,000) but less than four**

1 **hundred thousand (400,000), the allocation each year must be as**
 2 **follows:**

3 **(1) The first two million six hundred thousand dollars**
 4 **(\$2,600,000) shall be transferred to the county treasurer for**
 5 **deposit in the supplemental coliseum improvement fund.**

6 **(2) The remaining amount shall be transferred to the**
 7 **treasurer of the joint county-city capital improvement board**
 8 **in the county.**

9 The resolution must provide the tax area terminates not later than
 10 December 31, 2027.

11 (b) In addition to subsection (a), all of the salary, wages, bonuses,
 12 and other compensation that are:

13 (1) paid during a taxable year to a professional athlete for
 14 professional athletic services;

15 (2) taxable in Indiana; and

16 (3) earned in the tax area;

17 shall be allocated to the tax area if the professional athlete is a member
 18 of a team that plays the majority of the professional athletic events that
 19 the team plays in Indiana in the tax area.

20 (c) **For a tax area not located in a county having a population of**
 21 **more than three hundred thousand (300,000) but less than four**
 22 **hundred thousand (400,000), the total amount of state revenue**
 23 **captured by the tax area may not exceed five dollars (\$5) per resident**
 24 **of the city or county per year for twenty (20) consecutive years.**

25 (d) The resolution establishing the tax area must designate the
 26 facility or proposed facility and the facility site for which the tax area
 27 is established.

28 (e) The department may adopt rules under IC 4-22-2 and guidelines
 29 to govern the allocation of covered taxes to a tax area.

30 SECTION 27. IC 36-10-8-4 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) The board is
 32 composed of seven (7) members.

33 (b) The county executive shall determine in the creating ordinance
 34 which units within the county shall make appointments to the board. In
 35 addition, the creating ordinance must provide that no more than four
 36 (4) of the members be affiliated with the same political party. The
 37 creating ordinance must also provide staggered terms for the
 38 appointments.

39 (c) Notwithstanding subsection (b), if a board was created under
 40 IC 18-7-18 (before its repeal on February 24, 1982), three (3) members
 41 shall be appointed by the executive of the second class city and three
 42 (3) members shall be appointed by the executive of the county. Those
 43 members shall select the seventh member, who serves as president.
 44 One (1) of the members appointed by the city executive must be
 45 engaged in the hotel or motel business in the city. ~~The members~~
 46 ~~appointed by the county executive must be residents of the area of the~~
 47 ~~county outside the corporate boundaries of the city.~~ No more than two
 48 (2) of the members appointed by the city executive may be affiliated
 49 with the same political party and no more than two (2) of the members
 50 appointed by the county executive may be affiliated with the same
 51 political party. In addition, each member must have been a resident of

the county for at least one (1) year immediately preceding his appointment. Initial terms of the members are as follows:

(1) One (1) of the members appointed by each appointing authority for a term ending January 15 of the year following the appointment.

(2) Two (2) of the members appointed by each appointing authority for a term ending January 15 of the second year following the appointment.

(3) The seventh member serves for a term ending January 15 of the second year following the appointment.

(d) Subsequent terms of members are for two (2) years beginning on January 15 and until a successor is appointed and qualified. A member may be reappointed after his term has expired.

(e) If a vacancy occurs on the board, the appointing authority shall appoint a new member. That member serves for the remainder of the vacated term.

(f) A board member may be removed for cause by the appointing authority who appointed him.

(g) Each member, before entering upon his duties, shall take and subscribe an oath of office in the usual form. The oath shall be endorsed upon his certificate of appointment. The certificate shall be promptly filed with the records of the board. However, if the board was created under IC 18-7-18 (before its repeal on February 24, 1982), the certificate shall be filed with the clerk of the circuit court of the county in which the board is created.

(h) A member may not receive a salary, but is entitled to reimbursement for any expenses necessarily incurred in the performance of his duties.

SECTION 28. IC 36-10-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. The board may, acting under the name "(name of county) county capital improvement board of managers", or, if the board was created under IC 18-7-18 (before its repeal on February 24, 1982), "~~(name of the city) and (name of the county) county convention and tourism authority~~", "**(name of the county) and (name of the city) capital improvement board of managers**", do the following:

(1) Acquire by grant, purchase, gift, devise, lease, or otherwise, and hold, use, sell, lease, or dispose of, real and personal property and any rights and interests in it necessary or convenient for the exercise of its powers under this chapter.

(2) Construct, reconstruct, repair, remodel, enlarge, extend, or add to any capital improvement under this chapter and condemn, appropriate, lease, rent, purchase, and hold any real property, rights-of-way, materials, or personal property needed for the purposes of this chapter, even if it is already held for a governmental or public use.

(3) Control and operate a capital improvement, and receive and collect money due to the operation or otherwise relating to the capital improvement, including employing an executive manager and other agents and employees that are necessary for the acquisition, construction, and proper operation of the

improvements and fixing the compensation of all employees with a contract of employment or other arrangement terminable at the will of the board. However, a contract may be entered into with an executive manager and associate manager for a period not longer than four (4) years at one (1) time and may be extended from time to time for the same or shorter periods.

(4) Let concessions for the operation of restaurants, cafeterias, public telephones, news and cigar stands, vending machines, caterers, and all other services considered necessary or desirable for the operation of a capital improvement.

(5) Lease a capital improvement or a part of it to any association, corporation, or individual, with or without the right to sublet.

(6) Fix charges and establish rules and regulations governing the use of a capital improvement.

(7) Accept gifts or contributions from individuals, corporations, limited liability companies, partnerships, associations, trusts, or foundations and funds, loans, or advances on the terms that the board considers necessary or desirable from the United States, the state, or a political subdivision or department of either, including entering into and carrying out contracts and agreements in connection with this subdivision.

(8) Acquire the site for a capital improvement, or a part of a site by conveyance from the redevelopment commission of a city within the county in which the board is created or from any other source, on the terms that may be agreed upon.

(9) If the board was created under IC 18-7-18 (before its repeal on February 24, 1982), exercise within and in the name of the county the power of eminent domain under general statutes governing the exercise of the power for a public purpose.

(10) Receive and collect all money due for the use or leasing of a capital improvement and from concessions and other contracts, and expend the money for proper purposes, but any employees or members of the board authorized to receive, collect, and expend money must be covered by a fidelity bond, the amount of which shall be fixed by the board. Funds may not be disbursed by an employee or member of the board without prior specific approval by the board.

(11) Provide coverage for its employees under IC 22-3 and IC 22-4.

(12) Purchase public liability and other insurance considered desirable.

(13) Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including the enforcement of them.

(14) Maintain and repair a capital improvement and all equipment and facilities that are a part of it, including the employment of a building superintendent and other employees that are necessary to maintain the capital improvement.

(15) Sue and be sued in its own name, service of process being had upon the president or vice president of the board or by leaving a copy at the board's office.

(16) Prepare and publish descriptive material and literature relating to the facilities and advantages of a capital improvement and do all other acts that the board considers necessary to promote and publicize the capital improvement and serve the commercial, industrial, and cultural interests of Indiana and its citizens by the use of the capital improvement. It may assist and cooperate with public, governmental, and private agencies and groups for these purposes.

(17) Promote the development and growth of the convention and visitor industry in the county.

(18) Transfer money from the capital improvement fund established by this chapter to any Indiana not-for-profit corporation for the promotion and encouragement of conventions, trade shows, visitors, and special events in the county.

SECTION 29. IC 36-10-8-16, AS AMENDED BY P.L.146-2008, SECTION 796, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) A capital improvement may be financed in whole or in part by the issuance of general obligation bonds of the county or, if the **authority board** was created under IC 18-7-18 (before its repeal on February 24, 1982), also of the city, if the board determines that the estimated annual net income of the capital improvement, plus the estimated annual tax revenues to be derived from any tax revenues made available for this purpose, will not be sufficient to satisfy and pay the principal of and interest on all bonds issued under this chapter, including the bonds then proposed to be issued.

(b) If the board desires to finance a capital improvement in whole or in part as provided in this section, it shall have prepared a resolution to be adopted by the county executive authorizing the issuance of general obligation bonds, or, if the **authority board** was created under IC 18-7-18 (before its repeal on February 24, 1982), by the fiscal body of the city authorizing the issuance of general obligation bonds. The resolution must set forth an itemization of the funds and assets received by the board, together with the board's valuation and certification of the cost. The resolution must state the date or dates on which the principal of the bonds is payable, the maximum interest rate to be paid, and the other terms upon which the bonds shall be issued. The board shall submit the proposed resolution to the proper officers, together with a certificate to the effect that the issuance of bonds in accordance with the resolution will be in compliance with this section. The certificate must also state the estimated annual net income of the capital improvement to be financed by the bonds, the estimated annual tax revenues, and the maximum amount payable in any year as principal and interest on the bonds issued under this chapter, including the bonds proposed to be issued, at the maximum interest rate set forth in the resolution. The bonds issued may mature over a period not exceeding forty (40) years from the date of issue.

(c) Upon receipt of the resolution and certificate, the proper officers may adopt them and take all action necessary to issue the bonds in accordance with the resolution. An action to contest the validity of

bonds issued under this section may not be brought after the fifteenth day following the receipt of bids for the bonds.

(d) The provisions of all general statutes relating to:

(1) the filing of a petition requesting the issuance of bonds and giving notice;

(2) the right of:

(A) taxpayers and voters to remonstrate against the issuance of bonds in the case of a proposed bond issue described by IC 6-1.1-20-3.1(a); or

(B) voters to vote on the issuance of bonds in the case of a proposed bond issue described by IC 6-1.1-20-3.5(a);

(3) the giving of notice of the determination to issue bonds;

(4) the giving of notice of a hearing on the appropriation of the proceeds of bonds;

(5) the right of taxpayers to appear and be heard on the proposed appropriation;

(6) the approval of the appropriation by the department of local government finance; and

(7) the sale of bonds at public sale;

apply to the issuance of bonds under this section.

SECTION 30. IC 36-10-8-21 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 21. (a) This section applies only to a board that was created under IC 18-7-18 (before its repeal on February 24, 1982).**

(b) On or before March 31 each year, the executive manager shall submit to the board an annual report of the operations of the convention and visitor center.

SECTION 31. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2009]: IC 6-9-20-7; IC 6-9-20-8; IC 6-9-23; IC 6-9-33-10.

SECTION 32. [EFFECTIVE UPON PASSAGE] **A large percentage of the land in the city of Bloomington and in Monroe County is not taxable because the land is owned by the state or the federal government, which puts the city and the county at a disadvantage in their ability to fund projects. These special circumstances require legislation particular to the city and county.**

SECTION 33. **An emergency is declared for this act.**

(Reference is to EHB 1514 as reprinted April 7, 2009.)

Conference Committee Report
on
Engrossed House Bill 1514

Signed by:

Representative GiaQuinta
Chairperson

Senator Bray

Representative Eberhart

Senator Lanane

House Conferees

Senate Conferees